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7

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA *ex rel.*
11 OSWALDO GARCIA, an individual,

12 Plaintiff/Relator,

13 vs.

14 AMERICAN PROFESSIONAL
AMBULANCE CORP., DAVITA
15 HEALTHCARE PARTNERS INC.
D/B/A DAVITA AIRPORT DIALYSIS,
16 TZIPPY CARE, INC. D/B/A WESTERN
CONVALESCENT HOSPITAL, and
17 CANOGA HEALTHCARE INC. D/B/A
WEST HILLS HEALTH AND
18 REHABILITATION CENTER,

19 Defendants.
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Case No. 2:12-CV-10186-DSF (MRWx)

**JOINT STIPULATION RE
PROTECTIVE ORDER; ~~[PROPOSED]~~
STIPULATED PROTECTIVE ORDER**

1. INTRODUCTION

1.1 PURPOSES AND LIMITATIONS

Discovery, even that contemplated to be exchanged at an early stage, in this action is likely to involve production of Protected Health Information, confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 13.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

1.2 GOOD CAUSE STATEMENT

This action concerns ambulance transport services and will likely include the exchange of containing Protected Health Information, Business Confidential Information, and sensitive financial data. The exchange of such materials warrants special protection from public disclosures and from use for any purpose other than prosecution of this action. Such confidential and proprietary materials and information consist of, among other things, non-party patients' health records and descriptions of health conditions, non-party patients' addresses and personal identifying information, confidential business and financial information, other confidential research, and information that is otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state and federal statutes, court rule, case decisions or common law. Accordingly, to ensure the efficient flow of information between the parties, to protect the information that parties must keep confidential, and to ensure that the parties

are permitted reasonable uses of such material in preparation for trial and to address their handling at the end of litigation, a protective order for such information is justified in this matter. The parties do not intend to designate materials as confidential for tactical reasons and will not designate materials without a good faith belief that it has been maintained in a confidential, non-public matter, and there is good cause why it should not be part of the public record of this case.

2. DEFINITIONS

2.1 Action: the above-captioned federal law suit, United States *ex rel.* Garcia v. APA *et al.*

2.2 Business Confidential Information: Business Confidential Information (“BCI”) means any discovery material that the producing party or party objecting to the disclosure of the discovery material reasonably believes not to be in the public domain and reasonably believes contains any trade secret or other confidential, strategic, research, development, or commercial information as such terms are used in Federal Rule of Civil Procedure 26 (c)(1)(G) that, if disclosed, would detrimentally affect the party’s business, commercial or financial interest.

2.3 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.4 “CONFIDENTIAL” information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.5 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.6 Designating Party: a Party or Non-Party that designates information or items that it produces in a disclosure or in responses to discovery as “CONFIDENTIAL.”

2.7 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among

other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.8 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

2.9 House Counsel: attorneys who are employees of a party to this Action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.10 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.11 Outside Counsel of Record: attorneys who are not employees of a party to this Action but are retained to represent or advise a party to this Action and have appeared in this Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party, and includes support staff.

2.12 Party: any party to this Action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs.)

2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this Action.

2.14 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.15 Protected Material: any Disclosure or Discovery Material that is designated as "CONFIDENTIAL."

2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.17 Protected Health Information: Protected Health Information ("PHI"), as that term is used in the Health Insurance Portability and Accountability Act ("HIPAA") and

1 Privacy Standards defined in 45 CFR Parts 160 and 164. Without limiting the definition
 2 and merely for purpose of providing relevant examples, PHI includes, but is not limited
 3 to, individually identifiable health information that identifies an individual patient or
 4 which reasonably could be expected to identify an individual patient, including
 5 demographic information (e.g., name, address, telephone number) relating to either: the
 6 past, present, or future physical or mental condition of an individual; the provision of care
 7 to an individual; and the payment for care provided to an individual.

8 3. THIS STIPULATED PROTECTIVE ORDER CONSTITUTES A QUALIFIED
 9 PROTECTIVE ORDER UNDER 45 CFR § 164.512(e)(1)

10 The Parties expressly understand and agree that certain Disclosure or Discovery
 11 Material relevant to the claims and defenses in the Action may contain medical
 12 information or PHI regarding or relating to individuals who have a privacy interest in
 13 such information and that public disclosure thereof would be contrary to the law and
 14 public interest. The Parties also understand and agree that such Disclosure or Discovery
 15 Material are subject to HIPAA, 45 CFR Parts 160 and 164 and other similar statutory or
 16 regulatory privacy protections. The Parties agree that, once adopted, this Stipulated
 17 Protective Order will constitute a Qualified Protective Order pursuant to 45 CFR §
 18 164.512(e)(1).

19 All “covered entities” (as defined by 45 CFR § 160.103) are hereby authorized to
 20 disclose PHI as necessary to comply with and subject to the limitations of the Federal
 21 Rules of Civil Procedure, the discovery served in this Action and the Orders of this
 22 Court. The Parties to the Action and their attorneys as well as counsel who are managing
 23 the Action on behalf of the United States of America are hereby authorized to receive,
 24 subpoena, request, and transmit PHI to comply with and subject to the limitations of the
 25 Federal Rules of Civil Procedure, the discovery served in this case and the Orders of this
 26 Court. Any discovery served and documents produced related to PHI shall be consistent
 27 with the orders of this Court. This Order shall not control or limit the use of PHI that
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comes into the possession of any Party or any Party's attorney from a source other than a "covered entity" (as that term is defined in 45 CFR § 160.103).

4. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial will be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial.

5. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order will remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs, and the court shall retain continuing jurisdiction to enforce the terms of this Protective Order. Final disposition will be deemed to be the later of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

6. DESIGNATING PROTECTED MATERIAL

6.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations that
 2 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
 3 to unnecessarily encumber the case development process or to impose unnecessary
 4 expenses and burdens on other parties) may expose the Designating Party to sanctions.

5 If it comes to a Designating Party's attention that information or items that it
 6 designated for protection do not qualify for protection that Designating Party must
 7 promptly notify all other Parties that it is withdrawing the inapplicable designation.

8 **6.2 Manner and Timing of Designations.** Except as otherwise provided in this
 9 Order (see, e.g., second paragraph of section 6.2(a) below), or as otherwise stipulated or
 10 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
 11 must be clearly so designated before the material is disclosed or produced.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (e.g., paper or electronic documents, but
 14 excluding transcripts of depositions or other pretrial or trial proceedings), that the
 15 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
 16 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
 17 portion or portions of the material on a page qualifies for protection, the Producing Party
 18 also must clearly identify the protected portion(s) (e.g., by making appropriate markings
 19 in the margins).

20 A Party or Non-Party that makes original documents available for inspection need
 21 not designate them for protection until after the inspecting Party has indicated which
 22 documents it would like copied and produced. During the inspection and before the
 23 designation, all of the material made available for inspection will be deemed
 24 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
 25 copied and produced, the Producing Party must determine which documents, or portions
 26 thereof, qualify for protection under this Order. Then, before producing the specified
 27 documents, the Producing Party must affix the "CONFIDENTIAL legend" to each page
 28 that contains Protected Material. If only a portion or portions of the material on a page

1 qualifies for protection, the Producing Party also must clearly identify the protected
2 portion(s) (e.g., by making appropriate markings in the margins).

3 (b) for testimony given in depositions that the Designating Party identify the
4 Disclosure or Discovery Material on the record, before the close of the deposition all
5 protected testimony.

6 (c) for information produced in some form other than documentary and for any
7 other tangible items, that the Producing Party affix in a prominent place on the exterior of
8 the container or containers in which the information is stored the legend
9 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection,
10 the Producing Party, to the extent practicable, will identify the protected portion(s).

11 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
12 to designate qualified information or items does not, standing alone, waive the
13 Designating Party’s right to secure protection under this Order for such material. Upon
14 timely correction of a designation, the Receiving Party must make reasonable efforts to
15 assure that the material is treated in accordance with the provisions of this Order.

16 7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 7.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
18 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

19 7.2 Meet and Confer. The Challenging Party will initiate the dispute resolution
20 process (and, if necessary, file a discovery motion) under Local Rule 37.1 *et seq.*

21 7.3 The burden of persuasion in any such challenge proceeding will be on the
22 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
23 to harass or impose unnecessary expenses and burdens on other parties) may expose the
24 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
25 the confidentiality designation, all parties will continue to afford the material in question
26 the level of protection to which it is entitled under the Producing Party’s designation until
27 the Court rules on the challenge.

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1 8. ACCESS TO AND USE OF PROTECTED MATERIAL

2 8.1 Basic Principles. A Receiving Party may use Protected Material that is
 3 disclosed or produced by another Party or by a Non-Party in connection with this Action
 4 only for prosecuting, defending, or attempting to settle this Action. Such Protected
 5 Material may be disclosed only to the categories of persons and under the conditions
 6 described in this Order. When the Action has been terminated, a Receiving Party must
 7 comply with the provisions of section 14 below (FINAL DISPOSITION).

8 Protected Material must be stored and maintained by a Receiving Party at a
 9 location and in a secure manner that ensures that access is limited to the persons
 10 authorized under this Order.

11 8.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
 12 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
 13 may disclose any information or item designated “CONFIDENTIAL” only to:

14 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
 15 employees of said Outside Counsel of Record to whom it is reasonably necessary to
 16 disclose the information for this Action;

17 (b) the officers, directors, and employees (including House Counsel) of the
 18 Receiving Party to whom disclosure is reasonably necessary for this Action;

19 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
 20 reasonably necessary for this Action and who have signed the “Acknowledgment and
 21 Agreement to Be Bound” (Exhibit A);

22 (d) the Court and its personnel;

23 (e) court reporters and their staff;

24 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to
 25 whom disclosure is reasonably necessary for this Action and who have signed the
 26 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

27 (g) the author or recipient of a document containing the information or a custodian
 28 or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification will include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification will include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order will not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The

Designating Party will bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

10. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party will:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party will not produce any information in its possession or control that is subject to the confidentiality agreement

with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party will bear the burden and expense of seeking protection in this court of its Protected Material.

11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the Parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the Parties may incorporate their agreement in the stipulated protective order submitted to the court.

13. MISCELLANEOUS

13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing

1 or producing any information or item on any ground not addressed in this Stipulated
 2 Protective Order. Similarly, no Party waives any right to object on any ground to use in
 3 evidence of any of the material covered by this Protective Order.

4 13.3 Filing Protected Material. A Party that seeks to file under seal any Protected
 5 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
 6 under seal pursuant to a court order authorizing the sealing of the specific Protected
 7 Material at issue. If a Party's request to file Protected Material under seal is denied by the
 8 court, then the Receiving Party may file the information in the public record unless
 9 otherwise instructed by the court.

10 13.4 Collection of Medical Records or Information. Nothing in this Order
 11 authorizes any Party to obtain medical records or information through means other than
 12 (a) formal discovery requests, subpoenas or depositions, (b) pursuant to patient
 13 authorization, or (c) through attorney-client communications.

14 14. FINAL DISPOSITION

15 After the final disposition of this Action, as defined in paragraph 5, within 30 days
 16 of a written request by the Designating Party, each Receiving Party must return all
 17 Protected Material to the Producing Party or destroy such material. As used in this
 18 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
 19 summaries, and any other format reproducing or capturing any of the Protected Material.
 20 Whether the Protected Material is returned or destroyed, the Receiving Party must submit
 21 a written certification to the Producing Party (and, if not the same person or entity, to the
 22 Designating Party) by the 30 day deadline that (1) identifies (by category, where
 23 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
 24 the Receiving Party has not retained any copies, abstracts, compilations, summaries or
 25 any other format reproducing or capturing any of the Protected Material.

26 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
 27 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
 28 correspondence, deposition and trial exhibits, expert reports, attorney work product, and

1 consultant and expert work product, even if such materials contain Protected Material.
2 Any such archival copies that contain or constitute Protected Material remain subject to
3 this Protective Order as set forth in Section 5 (DURATION).

4 Any willful violation of this Order may be punished by civil or criminal contempt
5 proceedings, financial or evidentiary sanctions, reference to disciplinary authorities, or
6 other appropriate action at the discretion of the Court.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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3 DATED: March 9, 2017

DIETRICH SIBEN THORPE LLP

4 /s/ David A. Thorpe
David A Thorpe
Attorneys for Plaintiff/Relator

5
6 DATED: March 9, 2017

FOLEY & LARDNER LLP

7 /s/ Pamela L. Johnston
Pamela L. Johnston
Attorneys for Defendant AMERICAN
PROFESSIONAL AMBULANCE CORP.

8
9
10 DATED: March 9, 2017

BRYAN CAVE LLP

11 /s/ Cliff Stricklin
Cliff Stricklin
Attorneys for Defendant DAVITA
HEALTHCARE PARTNERS INC. D/B/A
DAVITA AIRPORT DIALYSIS

12
13
14
15 DATED: March 9, 2017

HOOPER, LUNDY & BOOKMAN, P.C.

16 /s/ Mark A. Johnson
Mark A. Johnson
Attorneys for Defendant TZIPPY CARE,
INC. D/B/A/ WESTERN
CONVALESCENT HOSPITAL and
CANOGA HEALTHCARE INC. D/B/A
WEST HILLS HEALTH AND
REHABILITATION CENTER

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21 Pursuant to Local Rule 5-4.3.4(a)(2)(i), I, Pamela L. Johnston attests that all other
22 signatories listed, and on whose behalf the filing is submitted, concur to the filing's
23 content and have authorized the filing.
24
25

26 /s/ Pamela L. Johnston
Pamela L. Johnston
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STIPULATED PROTECTIVE ORDER

FOR GOOD CAUSE SHOWN, THE ABOVE TERMS ARE SO ORDERED.

DATED: March 10, 2017



HON. MICHAEL R. WILNER
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ **[full name]**, of _____
[full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____, 2017, in the case of U.S. *ex rel.* Garcia v. APA *et al.*, Case No. CV 12-10186-DSF (MRWx). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order. I agree that at the conclusion of this Action, including the conclusion of all appeals, I shall certify in writing within 30 days that all CONFIDENTIAL information has been destroyed.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ **[full name]** of _____ **[full name, address and telephone number]** as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where signed: _____

Entity or Person: _____

Printed name: _____

Signature: _____